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PURCHASE AND SALE AGREEMENT

 This agreement (hereinafter the "Agreement") entered into and executed in duplicate originals this 21 day of August, 1999 by and between FAMILY GOLF CENTERS, INC., a New York corporation with a principal place of business at 538 Broadhollow Road, 4th Floor, Melville, New York 11747 (hereinafter "Seller"), and THE MICHAELS DEVELOPMENT GROUP, INC., a New York corporation with its principal place of business at 282 Ushers Road, Clifton Park, NY 12065 (hereinafter the "Purchaser").

The Seller agrees to sell, convey, and transfer to Purchaser, and Purchaser agrees to purchase and acquire from Seller, (i) all that certain plot, piece or parcel of land and the appurtenances thereto, which parcel of land contains approximately seventy-six (76) acres and is located on the west side of Meadowbrook Road south of Haviland Road in the Town of Queensbury, New York, and (ii) all those remaining twenty-two (22) townhouse footprint lots owned by Seller along Overlook Drive in the Town of Queensbury, New York, all as more particularly described in Exhibit A attached hereto and made a part hereof (collectively, hereinafter alternatively "Property" or the "Premises" and individually, the "Meadowbrook Property" and the "Overlook Property", respectively). The Premises to be conveyed shall include any and all other rights, easements, privileges, licenses or appurtenances benefiting, affecting or relating to the Premises.

ARTICLE I

PURCHASE PRICE

1.1 PURCHASE PRICE. The purchase price shall be FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00), and shall be payable as set forth below.

1.2 DEPOSIT. Upon the execution of this Agreement, the Purchaser shall remit the sum of TWENTY THOUSAND DOLLARS (\$20,000.00) as and for a deposit toward the purchase price of the Premises. Said deposit shall be held by McMahon, Grow & Getty, attorneys for the Seller, in escrow, in a non-interest bearing account until paid to the Seller in increments of \$10,000.00 each upon the closing of the Meadowbrook Property and the Overlook Property, respectively, or as liquidated damages, or until returned to the Purchaser pursuant to the terms of this Agreement. Notwithstanding anything to the contrary herein contained, the \$10,000.00 portion of the deposit applicable to the Meadowbrook Property shall become non-refundable at the end of the due diligence period hereunder.

1.3 BALANCE OF PURCHASE PRICE. The balance of the purchase price of the Premises shall be payable on the respective Closing Dates (as hereinafter defined) in certified funds, bank check, cashier's check, or wired funds in the following amounts: \$140,000.00 upon the transfer of title to the Overlook Property and \$390,000.00 upon the transfer of title to the Meadowbrook Property.

ARTICLE II

DUE DILIGENCE

2.1 DOCUMENTATION AND DISCLOSURES. The Seller shall deliver to the Purchaser or Purchaser's designated representative, the following documents within thirty (30) days after the execution of this Agreement:

- a. Copies of all government licenses, permits and approvals in the possession of the Seller pertaining to the Premises or the operation of any part thereof;
- b. Copies of all easements, covenants, conditions, and restrictions affecting title or the use of the Premises; and
- c. Copies of any and all studies and reports with respect to geotech matters or wetland concerns regarding the Premises in the possession of the Seller.

The parties acknowledge that the Premises shall be conveyed subject to a certain sewer line easement granted to Warren County which runs along the southern boundary of the Premises.

2.2 TIME LIMITATION. Commencing with the date of the execution of this Agreement, the Purchaser will have a period of ninety (90) days in which to perform its due diligence review of the above referenced documents (hereinafter "Due Diligence Period")

2.3 INSPECTIONS. During the Due Diligence Period, Purchaser or its designated representatives shall have the right and privilege to enter upon the Premises at reasonable times and upon reasonable notice to the Seller or its designated representatives to undertake physical inspections. Such inspections shall include, but not be limited to, soil and other geological inspections, engineering inspections, environmental inspections, wetlands inspections and surveys, archeological and related tests and such other tests, studies and surveys which Purchaser deems necessary or helpful in connection with its review of the Premises. All inspections, tests, studies and surveys shall be at Purchaser's sole cost and expense. Purchaser shall indemnify and hold the Seller harmless for any and all liabilities or costs arising out of said inspections, tests, studies and surveys, including, but not limited to, any personal injury, property damage, liens or judgments. Purchaser shall not be responsible for any preexisting condition of the Premises, including, but not limited to, the presence of hazardous materials.

2.4 TERMINATION OF CONTRACT. If, during the Due Diligence Period, the Purchaser determines in Purchaser's sole and absolute discretion that the Premises is unsatisfactory for Purchaser's intended use of the Meadowbrook Property as a multifamily residential and office development, or for the Purchaser's intended use of the Overlook Property for between eight (8) and ten (10) two-unit townhouse buildings, Purchaser may elect to terminate this Agreement, as to either the Meadowbrook Property or the Overlook Property or both, by notifying the Seller of this decision in writing. The notification of this option to terminate this agreement pursuant to the terms of this

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paragraph must be postmarked no later than the final day of the Due Diligence Period. If the Purchaser properly terminates the Agreement pursuant to the terms of this paragraph, the Agreement shall be annulled, the Buyer shall be entitled to a return of the deposit set forth in paragraph 1.2 herein only, and the parties shall have no further rights or responsibilities to each other. However, in the event of such termination by Purchaser, the Purchaser will immediately deliver to Seller all surveys, test results, studies, documents, or other material related to the acquisition or proposed development of the property for use by the Seller in the future. Such delivery will not impose upon the Purchaser any duty to obtain the consent of any third party to allow the Seller to utilize any such material. If, however, the Purchaser does not properly terminate this contract in accordance with the terms of this paragraph, this Due Diligence contingency shall be waived and of no further force and effect and Purchaser shall proceed to closing in accordance with the terms of the remainder of the Agreement.

ARTICLE III

CONTINGENCIES

3.1 CONTINGENCIES. The Purchaser's obligation to Purchase the Premises shall be subject to the following contingencies:

a-1. **Meadowbrook Property:** Receipt by Purchaser of all applicable permits and approvals necessary for the development and construction of multifamily residences and office buildings with a site plan satisfactory to the Purchaser, by all municipal, state and federal agencies or bodies having jurisdiction over the proposed development, including, without limitation, the reservation of sufficient sewerage capacity from the Town of Queensbury, Purchaser shall be responsible for any and all costs associated with obtaining said approvals, but Seller agrees to execute whatever documents are reasonably necessary to aid Purchaser in obtaining said approvals. Purchaser agrees to diligently and expeditiously seek said permits and approvals immediately after the expiration of the Due Diligence Period. If the Purchaser is unable to procure the necessary permits and approvals within seventeen (17) months after the execution of this Agreement (hereinafter the "Permit Period"), the Purchaser shall have the option of either terminating this Agreement as to the Meadowbrook Property, or waiving this contingency and proceeding to closing. If the Purchaser properly terminates the Agreement pursuant to the terms of this paragraph, the Agreement shall be annulled as to the Meadowbrook property and the parties shall have no further rights or responsibilities to each other as to the Meadowbrook Property. Notice of termination of the Agreement under the terms of this paragraph shall be given to the Seller in writing and postmarked no later than the final day of the Permit Period. If the Agreement is not terminated by the Purchaser as to the Meadowbrook Property in accordance with the terms of this paragraph, this contingency shall be deemed waived and the Purchaser shall proceed to closing on the Meadowbrook Property.

a-2. **Overlook Property:** Receipt by Purchaser of all applicable permits and approvals necessary for the development and construction of eight (8) to ten (10) two-unit townhouse buildings with a site plan satisfactory to the Purchaser, by all municipal, state and federal agencies or bodies having jurisdiction over the proposed development, including, without limitation, a modification of

the approved site plan and subdivision from the Town of Queensbury, Purchaser shall be responsible for any and all costs associated with obtaining said approvals, but Seller agrees to execute whatever documents are reasonably necessary to aid Purchaser in obtaining said approvals. Seller and Purchaser agree to work together to obtain all necessary approvals from the Overlook at Hiland HOA for the reconfiguration of the site plan and subdivision, including, without limitation, real property exchanges as may be necessary to accommodate revised townhome building "footprints". Purchaser agrees to diligently and expeditiously seek said permits and approvals immediately after the expiration of the Due Diligence Period. If the Purchaser or the Seller, respectively, are unable to procure the necessary permits and approvals, including the approval by the HOA, within three (3) months after the execution of this Agreement (hereinafter the "Permit Period"), the Purchaser shall have the option of either terminating this Agreement as to the Overlook Property, or waiving this contingency and proceeding to closing. However, if the HOA approval is not obtained within such three (3) month period, the parties hereto hereby agree to a reasonable extension to allow them to work together to obtain such approval. If the Purchaser properly terminates the Agreement pursuant to the terms of this paragraph, the Agreement shall be annulled, as to the Overlook Property, and the parties shall have no further rights or responsibilities to each other as to the Overlook Property. Notice of termination of the Agreement under the terms of this paragraph shall be given to the Seller in writing and postmarked no later than the final day of the Permit Period. If the Agreement is not terminated by the Purchaser as to the Overlook Property in accordance with the terms of this paragraph, this contingency shall be deemed waived and the Purchaser shall proceed to closing on the Overlook Property. In the event that the entire Agreement is terminated pursuant to paragraph 3.1 a-1 and 3.1 a-2, the Purchaser shall be entitled to a return of the deposit set forth in paragraph 1.2 herein.

b. Receipt by Purchaser of a Commitment of Title Insurance evidencing insurable title to the Premises, acceptable to the Purchaser, free of all defects and encumbrances except as set forth in Paragraph 4.1 herein. Purchaser agrees to apply for said Title Insurance commitment within fifteen (15) days after the termination of the Due diligence Period and to have said Title Insurance Commitment within forty-five (45) days following the termination of the Due diligence Period.

c. There are no hazardous or toxic material, wastes or substances, oil, petroleum products etc. located, stored, generated, released or discharged in, from, under or in the Property and, to the best of Seller's knowledge, no such hazardous or toxic substances, wastes or materials were ever stored, located, generated, released or discharged on, in, from or under the Property or any property contiguous or adjacent to the Property. Seller shall indemnify and hold harmless claims, costs and expenses (including without limitation, reasonable attorney's fees and and remediation expenses) which Purchaser, its officers, directors or employees may suffer or incur law with respect to the storage, use, disposal, discharge or release of hazardous or toxic materials, wastes or substances on, in, under at or from the Premises.

3.2 CONTINGENCY PERIOD. The "Contingency Period", as said term is utilized in this Agreement, shall mean that period of time commencing with the day after the final day of the Due Diligence Period and continuing until each of the contingencies set forth in this Article are met or waived, or until the termination of this Agreement in whole or in part pursuant to the terms of this Agreement.

ARTICLE IV

TITLE

4.1 DEED. Seller shall convey title to the Premises to the Purchaser at closing by a Bargain And Sale Deed with Covenant Against Grantor's Acts. Said deed shall convey insurable title thereto free from encumbrances, except that the following items shall not be deemed to render title uninsurable:

- a. Existence of normal utility easements of record;
- b. Existence of covenants, easements and restrictions of record which the title company will insure will not interfere with the use of the contemplated improvements on the Premises or will not result in a forfeiture of title;
- c. Existence of the standard printed exceptions in the title insurance policy form;
- d. Existence of zoning laws or other laws regulating the use of the real property, whether federal, state or local, so long as the Premises are not in violation thereof, and they do not prevent the intended use of the Premises by the Purchaser as an office development with a site plan acceptable to the Purchaser;
- e. Existence of mortgages, liens or encumbrances which shall be disposed of at closing;
- f. Unpaid liens or taxes, water charges and assessments which shall be paid at closing, subject to provisions for apportionment herein contained; and
- g. Existence of curb cuts to and from abutting streets in existence as of the, respective Closing Dates.

4.2 DEFECTS IN TITLE. Within fifteen (15) days following Purchaser's receipt of the report of Purchaser's title insurance company and no less than forty-five (45) days prior to the respective Closing Dates, the Purchaser shall give the Seller written notice of objections to title as shown on the report of Purchaser's title insurance company. Purchaser, notwithstanding such notice, shall not be bound by any defects arising after the date of the title report and on or before the respective Closing Dates, if Purchaser promptly notifies Seller of the defect as soon as Purchaser learns of it.

4.3 CURE OR WAIVER OF DEFECTS. If, after Seller receives notice of objections to title and is afforded reasonable adjournments of the respective Closing Dates to enable it to remove the objections, Seller is unable to convey title to the Premises, subject only to the liens, encumbrances, terms, and conditions specified in this Agreement, Purchaser may either:

- a. Accept such title Seller is able to convey without any reduction or abatement of the Purchase Price; or
- b. Rescind this Agreement, in which event Seller's sole obligation shall be to refund the deposit monies set forth in Paragraph 1.2, with the interest accumulated thereon.

4.4 CLOSING ADJOURNMENT. If Purchaser fails to give notice of objections or defects on or before the applicable dates Seller may elect to receive a "reasonable adjournment", which shall not be less than sixty (60) days after Purchaser gives such notice.

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4.5 SELLER'S OBLIGATION. Nothing contained herein shall be deemed to obligate or require Seller to institute, bring, maintain, or prosecute any action or proceeding or otherwise to incur any expense or cost in order to render title to the Premises marketable.

ARTICLE V

CLOSING

5.1 CLOSING DATE. The respective closings shall take place at 1:00 p.m. on or before the 30th day following the expiration of the respective Contingency Period with regard to the Overlook Property and the Meadowbrook Property (hereinafter, respectively, the "Closing Date"). The respective closings shall take place at the offices of the Purchaser's attorneys, Bartlett, Pontiff, Stewart & Rhodes, P.C., at One Washington Street, Glens Falls, New York or at the offices of Purchaser's lending institution or as required by such institution.

5.2 POSSESSION AND CONDITION OF THE PREMISES. The Premises is being sold "as is" and no warranties or representations are made, expressed or implied by the Seller as to the condition of the Premises or any improvements to the Premises. Seller shall deliver possession of the Premises, on the date of closing. The Premises shall be delivered in essentially the same condition as it existed as of the date of the execution of this agreement.

5.3 INSPECTIONS. In addition to the inspections granted to the Purchaser in paragraph 2.3 herein, the Purchaser and its representatives, consultants, engineers and agents shall have the right of access to the Premises upon prior notice and at reasonable times from the date of the execution of this Agreement until the respective Closing Date to conduct any additional inspections at the sole risk and expense of the Purchaser. The Purchaser agrees to indemnify and hold the Seller harmless from and against any personal injuries or damage to the Premises arising from said inspections.

5.4 REAL ESTATE TAXES. Homeowners Association dues and real property taxes in general and special assessments shall be prorated through respective Closing Dates on the basis of the fiscal year for such taxes and assessments. If the respective Closing Date shall occur before the real property tax rate for such fiscal year is fixed, the apportionment of taxes shall be made on the basis of the taxes assessed for the preceding fiscal year. After the real property taxes are fixed for the fiscal year in which the Closing Date occurs, Seller and Purchaser shall make a recalculation of the apportionment of such taxes, net a portion payable by the charge to the tenants and Purchaser or Seller, as the case may be, shall make an appropriate payment to the other based on such recalculation. To the extent Seller has undertaken to obtain any real estate tax abatement, the amount of the net proceeds of such tax abatement shall be prorated through the Closing Date, if, as and when such proceeds are paid by the applicable governmental taxing authority. This paragraph shall survive the closing. If any parcel to be conveyed pursuant to this Agreement is part of a larger tax assessment parcel, the tax assessment to be used for adjusting taxes until the parcel is separately assessed shall be calculated using the same method and formula used by the Town Tax Assessor in determining the tax assessment on the larger tax parcel.

5.5 CLOSING COSTS. The Purchaser shall be responsible for payment of all costs and fees associated with the closing of title, including recording fees, and shall be responsible for any and all costs in connection with procuring Title Insurance, surveys and inspections. The Seller shall be responsible for the payment of the New York State transfer tax payable upon the conveyance of title to the Property.

ARTICLE VI

CASUALTY AND/OR OTHER CONDEMNATION

If the Premises or any part thereof (i) is damaged by casualty, or (ii) is taken by exercise of power of eminent domain prior to the Closing Date, the provisions of §5-1311 of the General Obligations Law (Uniform Vendor and Purchaser Risk Act) shall control in all instances.

ARTICLE VII

DISCLAIMER; MERGER

7.1 EXAMINATION OF PREMISES. The Purchaser has examined the Premises and is familiar with its physical condition. The Seller has not made and does not make any representations or warranties as to the physical condition and uses to which the Premises may be put or any other matter or thing affecting or relating to the Premises except as specifically set forth herein. The Purchaser acknowledges that the Purchaser has inspected the Premises and agrees to take the Premises "as is".

7.2 AGENT REPRESENTATIONS. Further, the Seller is not liable or responsible for, or bound by brokers, agents, or other representatives' statements, set ups, writings, or other representations to purchaser or others, all of which are merged into this contract and are superseded by the provisions of this article.

7.3 ENTIRE AGREEMENT. This contract constitutes the entire agreement between the parties, who have entered into the same after full investigation. Neither party has relied upon any statement, representation, or warranty by the other not embodied herein.

ARTICLE VIII

DEFAULT

If the Purchaser shall default in the keeping and performing of the terms of this Agreement, the Seller shall retain the respective sum paid on account of the purchase price as liquidated damages and not by way of penalty, and in such event the terms of this Agreement shall be canceled and of no further force and effect.

ARTICLE IX

BROKER

Each party agrees that Realty USA brought about this sale and the Purchaser agrees to pay the brokerage commission in accordance with the separate agreement between the Purchaser and Realty USA. Each party indemnifies the other from any and all costs resulting from any other claim or right to a brokerage commission arising out of this sale to the extent caused by the act of the Purchaser or Seller respectively.

ARTICLE X

MISCELLANEOUS

10.1 NOTICES. Whenever, by the terms of this Agreement, notice shall or may be given to the Purchaser or Seller, such notice shall be in writing and shall be sent by certified mail, return receipt requested, or delivered by overnight courier, with a copy to each respective party's attorney, or to such other address(s) as may from time to time hereafter be designated by the Purchaser or Seller by like notice to the other. In the case of mailing, any such notice shall be deemed to have been properly given for all purposes at the time such notice is mailed.

10.2 MODIFICATION. This Agreement may not be changed or terminated orally but only by an instrument executed by both parties.

10.3 BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

10.4 NONWAIVER. No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

10.5 HEADINGS. The headings in this Agreement are for convenience only and shall not be used to interpret or construe its provision.

10.6 GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

10.7 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10.8 ASSIGNMENT. The Purchaser may assign its rights and obligations under this agreement to The Michaels Group, LLC, however, such an assignment shall not operate to release Purchaser from liability to the Seller hereunder.

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10.9 TIME OF OFFER. This offer shall be withdrawn and shall be void and of no further force or effect unless accepted by Seller in writing on or before 5:00 p.m. on July 20, 1999.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed in duplicate originals as of the day and year first above written.

THE MICHAELS DEVELOPMENT GROUP

By: 

FAMILY GOLF CENTERS, INC.

By: 

STATE OF NEW YORK)

)ss:

COUNTY OF WARREN)

On this 6th day of Aug, 1999, before me personally came J. David Michaels to me known who being by me duly sworn, did depose and say that he resides in Warren County, New York and that he is President of THE MICHAELS DEVELOPMENT GROUP, the corporation described in and which executed the foregoing instrument, and that he signed his name thereto by order of the Board of Directors of said corporation.


Notary Public

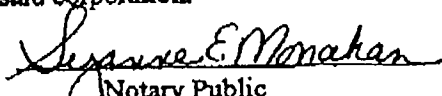
Commission Expires: 10/31/00

STATE OF NEW YORK)

)ss:

COUNTY OF)

On this 6th day of Aug, 1999 before me personally came Rodney Polacki to me known who being by me duly sworn, did depose and say that he/she resides in Oneida County, New York and that he/she is Vice President of FAMILY GOLF CENTERS, INC., the corporation described in and which executed the foregoing instrument, and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.


Notary Public

Commission Expires: 10/31/00

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EXHIBIT A

All of the remaining Townhouse footprint lots owned by Family Golf Centers, Inc. in the Overlook at Hiland Homeowners Association, Inc. subdivision on Overlook Drive, Queensbury, New York and all that certain parcel located on the west side of Meadow Brook Road and south of Haviland Road, Queensbury, New York. This description shall be replaced by an actual survey description in the deeds to be conveyed at the closings.

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KEY BANK, N.A. 851 New Loudon Rd. Latham, NY 12110

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CHECK AMOUNT

\$20,000.⁰⁰/₁₀₀

PAY

\$20,000.00

TO THE ORDER OF

McMAHON, GROW + BETTY

Helena Davis

[Signature]

VOID AFTER SIX MONTHS

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